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# Southeast Coal Company v. Harmie Griffie, James R. Yocom, Commissioner of Labor and Custodian of the Special Fund, Special Fund, and Workmen's Compensation Board

Appellee's Brief 1976-SC-0293

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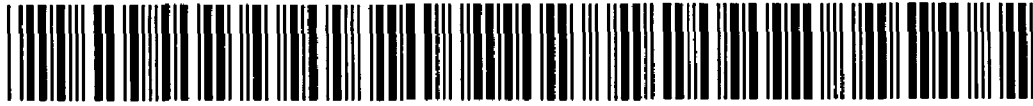
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**KYSC1976-SC-0293-03**

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# **APPELLEE'S BRIEF**

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S U P R E M E   C O U R T   O F   K E N T U C K Y

FILE NO. 76-293

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SOUTHEAST COAL COMPANY, . . . . . APPELLANT,

VS:

HARMIE GRIFFIE, JAMES R. YOCOM,  
Commissioner of Labor and Custodian of  
the Special Fund, SPECIAL FUND, and  
WORKMEN'S COMPENSATION BOARD, . . . . . APPELLEES.

---

APPEAL FROM LETCHER CIRCUIT COURT  
HONORABLE F. BYRD HOGG, JUDGE

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FILED

BRIEF FOR APPELLEE

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JUN 29 1976

Martina Layne Collins  
CLERK  
Supreme Court Of Kentucky

LESTER H. BURNS, JR.  
ATTORNEY AT LAW  
P.O. Box 675  
Burnside, Kentucky 42519

ATTORNEY FOR APPELLEE,  
HARMIE GRIFFIE

Pursuant to RCA 1.250, true copies of this brief was mailed to Hon. Gayle G. Huff, Rice & Huff, Harlan, Kentucky; Hon. John L. Pendley, Special Fund, Frankfort, Kentucky; Hon. William L. Huffman, Director, Workmen's Compensation Board, Frankfort, Kentucky; and to Hon. F. Byrd Hogg, Judge of Letcher Circuit Court, Whitesburg, Kentucky, on this the 6<sup>th</sup> day of June, 1976.

  
ATTORNEY FOR APPELLEE  
HARMIE GRIFFIE

S U P R E M E C O U R T O F K E N T U C K Y

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BRIEF FOR APPELLEE

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MAY IT PLEASE THE COURT:

Unless otherwise apparent or indicated throughout this brief numbers in parantheses refer to pages in the original record of the Workmen's Compensation Board. The Appellee, Harmie Griffie, is usually referred to as Appellee or compensation claimant.

TABLE OF CONTENTS  
AND AUTHORITIES

	Page
STATEMENT OF THE QUESTIONS PRESENTED . . . . .	ii
COUNTER STATEMENT OF THE CASE . . . . .	1i
ARGUMENT . . . . .	1 & 2
1. WHETHER THE FINDINGS OF FACT OF THE WORK- MEN'S COMPENSATION BOARD RELATIVE TO THE ORI- GIN OF THE INJURY FOR WHICH THE AWARD WAS GRANTED CLAIMANT, HARMIE GRIFFIE, IS SUPPORTED BY SUBSTANTIVE EVIDENCE.	
2. WHERE THE INDEPENDENT PHYSICIAN APPOINTED UNDER KRS 342.121 REPORTS THAT THE CLAIMANT'S DISABILITY IS ENTIRELY DUE TO THE MOST RECENT INJURY, IT WAS NOT CLEARLY ERRONEOUS FOR THE WORKMEN'S COMPENSATION BOARD TO FIND THAT NO APPORTIONMENT WAS WARRANTED UNDER KRS 342.120 AND THEREBY DISMISS THE CLAIM AGAINST THE SPECIAL FUND.	
KRS 342.121 . . . . .	1 & 2
Smyzer v. B. F. Goodrich Chemical Company, Ky., 474 S. W. 2d 367 (1971) . . . . .	2
Blackenship v. Lloyd Blackenship Coal Company, Ky., 463 S. W. 2d 62 (1971) . . . . .	2
Young v. Ashland Oil and Refining Company, Ky., 422 S. W. 3d 286 . . . . .	2
CONCLUSION . . . . .	3

STATEMENT OF THE  
QUESTIONS PRESENTED

1. WHETHER THE FINDINGS OF FACT OF THE WORKMEN'S COMPENSATION BOARD RELATIVE TO THE ORIGIN OF THE INJURY FOR WHICH THE AWARD WAS GRANTED CLAIMANT, HARMIE GRIFFIE, IS SUPPORTED BY SUBSTANTIVE EVIDENCE.

2. WHERE THE INDEPENDENT PHYSICIAN APPOINTED UNDER KRS 342.121 REPORTS THAT THE CLAIMANT'S DISABILITY IS ENTIRELY DUE TO THE MOST RECENT INJURY IT WAS NOT CLEARLY ERRONEOUS FOR THE WORKMEN'S COMPENSATION BOARD TO FIND THAT NO APPORTIONMENT WAS WARRANTED UNDER KRS 342.120 AND THEREBY DISMISS THE CLAIM AGAINST THE SPECIAL FUND.

COUNTER STATEMENT  
OF THE CASE

No Counter Statement of the case is necessary by Appellee.

ARGUMENT I

WHETHER THE FINDINGS OF FACT OF THE WORKMEN'S COMPENSATION BOARD RELATIVE TO THE ORIGIN OF THE INJURY FOR WHICH THE AWARD WAS GRANTED CLAIMANT, HARMIE GRIFFIE, IS SUPPORTED BY SUBSTANTIVE EVIDENCE.

The testimony of Dr. Miller, the Board appointed impartial physician, in the opinion of the undersigned, clearly supports the findings of the Board relative to the dismissal of the Special Fund as a party defendant and the award should not have been apportioned and was clearly assessed and adjudged against the defendant Southeast Coal Company.

Further, the testimony of Dr. Hunter and Dr. Gillispie in their entirety constituted a question of fact for determination by the Board which was determined against Appellant and in favor of the Special Fund.

ARGUMENT II

WHERE THE INDEPENDENT PHYSICIAN APPOINTED UNDER KRS 342.121 REPORTS THAT THE CLAIMANT'S DISABILITY IS ENTIRELY DUE TO THE MOST RECENT INJURY, IT WAS NOT CLEARLY ERRONEOUS FOR THE WORKMEN'S COMPENSATION BOARD TO FIND THAT NO APPORTIONMENT WAS WARRANTED UNDER KRS 342.120 AND THEREBY DISMISS THE CLAIM AGAINST THE SPECIAL FUND.

The independent physician appointed by the Board pursuant to KRS 342.121 in this case found a 10% functional impairment and testified in depth further that Appellee, Harmie Griffie, was totally disabled and it was not erroneous for the Board to find the Workmen's Compensation claimant to be totally disabled solely due to the accident of February 22, 1973.

It is elementary law that the Workmen's Compensation Board's findings of fact shall stand on appeal unless it is clearly erroneous on the basis of the reliable, probative, and material evidence contained in the whole record. KRS 342.285(3)(d). The basic question to be considered is whether there is substantive evidence which will support the findings of the Board. Smyzer v. B. F. Goodrich Chemical Company, Ky., 474 S. W. 2d 367 (1971); Blackenship v. Lloyd Blackenship Coal Company, Ky., 463 S. W. 2d 62 (1971).

The depositions of Dr. Miller, Dr. Hunter and Dr. Gillispie clearly and without equivocation establish that the Board acted upon sworn, competent, reliable, probative, material and substantial evidence in arriving at the 100% total disability.

Even the reports of the independent physicians in his case constitute substantive evidence which supports the findings of the Board. Young v. Ashland Oil and Refining Company, Ky., 422 S. W. 2d 286, held that the report of the .121 physician is acceptable evidence of probative value, and regardless of other medical testimony in the record to the contrary, the Board properly could rest a finding of fact upon it.

The undersigned feels that it would be a waste of time of this Honorable Court to reiterate and state the facts which are so clearly obvious in this case.

#### CONCLUSION

It is the opinion of the undersigned that the judgment of the Letcher Circuit Court should be affirmed with



direction that the case be remanded to the Workmen's  
Compensation Board for enforcement of its Opinion and  
Award of August 4, 1975.

Respectfully submitted,

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